

# Geophonic Networks, Inc.

Post Office Box 580  
Summit, New Jersey 07902  
Telephone: 973 410 1500

January 26, 2004

**BY FEDERAL EXPRESS # 8360 4753 0898**  
**& FIRST CLASS MAIL – CERTIFIED # 7099 3400 0020 7329 1644**

Board of Public Utilities  
State of New Jersey  
c/o Kristi Izzo, Secretary  
Two Gateway Center – 8<sup>th</sup> Floor  
Newark, NJ 07102

Re: In the Matter of the Provision of Basic Generation Service (“BGS”)  
Pursuant to the Electric Discount and Energy Competition Act,  
N.J.S.A. 48:3 – 57  
Docket No. EX 01110754

Dear Secretary Izzo:

Geophonic Networks, Inc. (“Geophonic”) holds U.S. Patent No. 6,047,274 (the “’274 Patent”) and U.S. Patent No. 6,598,029 (the “’029 Patent”). These patents apply to energy auctions such as the first and second New Jersey basic generation service (“BGS”) auctions held in February 2002 and February 2003, respectively, and the third BGS auction planned for February 2004.

On January 22, 2004, the United States Patent & Trademark Office published (i) U.S. Patent Application Serial No. 10/062,798, as amended August 18, 2003 (the “’798 Application”) and (ii) U.S. Patent Application Serial No. 10/633,937, filed August 4, 2003 (the “’937 Application”) as the result of Geophonic’s requests for early publication made pursuant to 35 U.S.C. § 122(b). We have attached copies of the published ‘798 Application and the published ‘937 Application for your reference.

This letter shall serve as notice to the Board of Public Utilities (the “BPU”) of the publication on January 22, 2004 of both the ‘798 Application and the ‘937 Application. Under 35 U.S.C. §154(d) (copy enclosed), the publication of each Application provides Geophonic with the right, before a patent is issued, to a reasonable royalty from any

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person who had actual notice of such published Application and who makes, uses, offers for sale or sells in the United States the invention as claimed in such published Application. This right to a reasonable royalty accrues immediately. Geophonic's right to a reasonable royalty under 35 U.S.C. §154(d) assumes that the invention as claimed in the patent (when issued) resulting from such Application is substantially identical to the invention as claimed in the published Application.

As we have stated in our prior correspondence to the BPU and the representative of the four EDCs participating in the BGS auctions, Geophonic continues to stand ready to provide a license to the BPU and/or any or all of the four participating EDCs (or their respective affiliates), at a reasonable royalty rate, for the use of Geophonic's patented energy auction process in BPU-approved BGS auctions.

We look forward to discussing this matter further with the BPU or its representatives.

Very truly yours,



Jack J. Johnson  
President

Attachments

cc (without attachments):

Jeanne M. Fox, BPU President  
Frederick F. Butler, BPU Commissioner  
Carol J. Murphy, BPU Commissioner  
Connie O. Hughes, BPU Commissioner  
Jack Alter, BPU Commissioner  
Nusha Wyner, Director – Division of Energy  
Irah H. Donner, Esq. (EDCs' outside counsel)  
William J. Heller, McCarter & English

## United States Code Title 35 - Patents

### 35 U.S.C. 154 Contents and term of patent; provisional rights.

#### (d) PROVISIONAL RIGHTS.—

(1) IN GENERAL.— In addition to other rights provided by this section, a patent shall include the right to obtain a reasonable royalty from any person who, during the period beginning on the date of publication of the application for such patent under section 122(b), or in the case of an international application filed under the treaty defined in section 351(a) designating the United States under Article 21(2)(a) of such treaty, the date of publication of the application, and ending on the date the patent is issued—

(A) (i) makes, uses, offers for sale, or sells in the United States the invention as claimed in the published patent application or imports such an invention into the United States; or

(ii) if the invention as claimed in the published patent application is a process, uses, offers for sale, or sells in the United States or imports into the United States products made by that process as claimed in the published patent application; and

(B) had actual notice of the published patent application and, in a case in which the right arising under this paragraph is based upon an international application designating the United States that is published in a language other than English, had a translation of the international application into the English language.

(2) RIGHT BASED ON SUBSTANTIALLY IDENTICAL INVENTIONS.— The right under paragraph (1) to obtain a reasonable royalty shall not be available under this subsection unless the invention as claimed in the patent is substantially identical to the invention as claimed in the published patent application.

(3) TIME LIMITATION ON OBTAINING A REASONABLE ROYALTY.— The right under paragraph (1) to obtain a reasonable royalty shall be available only in an action brought not later than 6 years after the patent is issued. The right under paragraph (1) to obtain a reasonable royalty shall not be affected by the duration of the period described in paragraph (1).